

1980-1981 Ky. Op. Atty. Gen. 2-883, Ky. OAG 81-365, 1981 WL 142437 (Ky.A.G.)

***1** Office of the Attorney General
Commonwealth of Kentucky

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October 19, 1981

Honorable Martin W. Johnson
City Attorney

Dear Mr. Johnson:

This is in response to your letter of October 5, in which you state that the cities of Benton and Hardin are involved in negotiating a contract whereby the City of Benton will furnish water to the City of Hardin. The question is raised concerning the duration of the contract, that is, whether or not it could extend for forty years as proposed by the Farmers Home Administration which will loan money for the construction of the distribution system.

We initially refer you to [KRS 96.120](#), which reads as follows:

"Any city may acquire a franchise to furnish water and light to any other city, in the same manner that any private corporation or individual may acquire such a franchise."

The above statute authorizes the proposed sale of water between the cities of Benton and Hardin. However, such a contract would necessarily be in the nature of a franchise acquired in this instance by the City of Benton from the City of Hardin and would be governed, in our opinion, by [Section 164 of the Constitution](#). As you know, this section prohibits any franchise from exceeding twenty years and at the same time requires that it be let on a bid basis, though from a practical standpoint, in this instance, there would be only one bidder. Nevertheless, we believe that the terms of [Section 164](#) must be complied with.

Prior to the expiration of the 20-year contract the franchise would have to be renegotiated as provided in [KRS 96.010](#), which should be no problem in this instance since there is apparently only one source of supply.

Yours very truly,

Steven L. Beshear
Attorney General

By: Walter C. Herdman
Assistant Deputy Attorney General

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